

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

PATRICIA DITOMASO,	:	APPEAL NO. C-070630
	:	TRIAL NO. A-9501925
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
STANLEY BROWN,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Bringing forth three assignments of error, defendant-appellant Stanley Brown appeals the trial court's judgment denying his motion for relief from judgment under Civ.R. 60(B)(5). For the following reasons, we affirm.

The record demonstrates that plaintiff-appellee Patricia Ditomaso had sued Brown for legal malpractice in April 1995. She served the complaint and summons by certified mail at Brown's residence. On April 22, 1995, Brown signed the postal receipt card documenting receipt of the suit papers.

In the same month that Brown signed the postal receipt, Ditomaso filed an amended complaint. Ditomaso attempted to serve this complaint on Brown by certified mail, but the complaint and summons went unclaimed. Eventually,

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Ditomaso served the amended complaint by regular mail in May 1995. Brown did not answer the complaint or the amended complaint. In September 1995, Ditomaso moved for a default judgment, which was granted in November 1995.

Eleven years later, Brown moved for relief from judgment under Civ.R. 60(B)(5), arguing that at the time that he was allegedly representing Ditomaso he was addicted to cocaine. Although he admitted to being aware in April 1995 that Ditomaso was suing him and another attorney with whom he shared office space, he believed that the other attorney was settling the claims. The trial court denied Brown's motion because it was untimely.

In his first assignment of error, Brown contends that the trial court erred by denying his motion for relief from judgment, and in his second assignment of error, he maintains that the trial court erred by denying him a hearing on his motion for relief from judgment. We consider these assignments of error together and find them unpersuasive.

We review a trial court's decision to grant or deny relief from judgment under Civ.R. 60(B) under an abuse-of-discretion standard.² Reversal is warranted only when the court's attitude was "unreasonable, arbitrary, or unconscionable."³ To prevail on a Civ.R. 60(B)(5) motion for relief from judgment, the movant must seek relief within a reasonable time and must demonstrate a "reason justifying relief from judgment" and a meritorious defense or claim to present if relief is granted.⁴

First, we cannot say that Brown's motion was timely when it was filed 11 years after the default judgment had been entered, and when Brown had admitted that he

² *Harris v. Anderson*, 109 Ohio St.3d 101, 2006-Ohio-1934, 846 N.E.2d 43, at ¶7.

³ *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140.

⁴ See *GTE Automatic v. ARC Industries* (1976), 47 Ohio St.2d 146, 150, 351 N.E.2d 113.

was aware as early as 1995 that Ditomaso was suing him. We note that Brown's signature was on the postal receipt verifying that he had received the original complaint in the mail. He never answered this complaint despite having received service and sufficient notice of the proceedings. Accordingly, we cannot say that the trial court abused its discretion in denying his motion for relief from judgment.⁵ Furthermore, we hold that the trial court did not err in failing to conduct a hearing prior to ruling on the motion for relief from judgment. It is clear from the record that Brown's motion was not filed within a reasonable time. The first and second assignments of error are overruled.

In his third assignment of error, Brown argues that the trial court erred "in failing to overturn the award of compensatory and punitive damages" granted to Ditomaso in November 1995. We overrule this assignment of error, as we have upheld the trial court's refusal to set aside the default judgment awarding damages to Ditomaso in the preceding assignments of error.

Accordingly, the judgment of the trial court is affirmed.

Further, a certified copy of this Judgment Entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., CUNNINGHAM and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on October 22, 2008
per order of the Court _____
Presiding Judge

⁵ See *Scheper v. McKinnon*, 1st Dist. No. C-070827, 2008-Ohio-3964, at ¶12.